



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 23, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael Sanders
Treasurer
Benton for Congress
P.O. Box 5076
Vancouver, WA 98668

RE: MUR 5066

Dear Mr. Sanders:

On August 8, 2000, the Federal Election Commission found that there is reason to believe that Benton for Congress and you, as treasurer, violated 2 U.S.C. § 441a(f), and 11 C.F.R. § 103.3(b)(3), (4), and (5). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing pre-probable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such

Letter to Michael Sanders

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counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Albert Veldhuyzen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Darryl R. Wold
Chairman

Enclosures

Factual and Legal Analysis

Procedures

Designation of Counsel Form

Conciliation Agreement

cc: candidate

21.04.405.3331

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Benton for Congress and Michael Sanders, as treasurer **MUR:** 5066

I. GENERATION OF MATTER

This matter was generated by an audit of Benton for Congress ("Committee") and Michael Sanders, as treasurer, undertaken in accordance with 2 U.S.C. § 438(b).

II. FACTUAL AND LEGAL ANALYSIS

A. LAW

The Federal Election Campaign Act of 1971 ("Act"), as amended, provides that no person shall make contributions to any candidate or authorized committee with respect to any election for federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A). Candidates and their committees are prohibited from knowingly accepting any contributions in excess of the Act's limitations. 2 U.S.C. § 441a(f); *see also* 11 C.F.R. § 110.9(a).

Contributions made "with respect to any election" means, in the case of a contribution not designated in writing by the contributor for a particular election, the next election for the federal office after the contribution is made. 11 C.F.R. §§ 110.1(b)(2) and 110.2(b)(2). Contributions which exceed the contribution limitations of the Act on their face, and contributions which do not exceed the Act's limitations on their face but which do exceed those limitations when aggregated with other contributions from the same contributor, may either be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution in accordance with 11 C.F.R. §§ 110.1(b), 110.1(k), or 110.2(b). If a written

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redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor. 11 C.F.R. § 103.3(b)(3).

The principal campaign committee of a candidate shall notify the Secretary or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. 2 U.S.C. § 434(a)(6)(A). This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. 2 U.S.C. § 434(a)(6)(A).

B. ANALYSIS

1. Excessive Contributions

The Committee received excessive contributions from 19 individuals totaling \$13,488. Of this amount, the Committee untimely refunded portions of the excessive contributions totaling \$90 to two individuals. The Committee's treasurer either did not obtain or maintain written redesignations or reattributions of the excessive contributions that should have been acquired within 60 days from the date that the Committee received such contributions.¹ 11 C.F.R. §§ 110.1(b)(5)(ii) and 110.1(k)(3).

Two checks in the amounts of \$30 and \$60 were issued on June 23, 1999 to contributors for the excessive portions of their contributions. Although the Audit staff, at the completion of fieldwork on June 18, 1999, recommended that the Committee either refund excessive

¹ According to the Committee, the candidate had personally discussed with each contributor on the excessive contribution list how his or her contribution would be designated. The Committee apparently lost or misplaced the original redesignation/retribution letters.

contributions in the amount of \$13,488 or provide evidence that these contributions were not excessive, the Committee chose not to refund all the contributions. The Committee claims that contributions totaling \$13,398 were legitimate. The Committee provided statements from contributors evidencing their discussions with the candidate and verifying their prior intent to redesignate or reattribute the excessive amounts of their contributions.

In order to support its claim that the excessive contributions do not have to be refunded, the Committee was required to retain documentation demonstrating when the written redesignations or written reattributions were received. 11 C.F.R. § 110.1(l)(6). The failure to obtain and maintain these written records invalidates any verbal redesignations or reattributions, and "the original designation or attribution shall control." Explanation and Justification of 11 C.F.R. § 110.1(l), 52 Fed. Reg. 766-67 (Jan. 9, 1987). Therefore, the Committee's treasurer was required to refund the excessive contribution amounts within 60 days of receipt of such contributions. 11 C.F.R. § 103.3(b)(3). Additionally, the Committee did not deposit the excessive contributions into a separate account, nor maintain sufficient funds after November 18, 1998 to refund these contributions. 11 C.F.R. § 103.3(b)(4). The Committee appears to have unresolved excessive contributions totaling \$13,398 (\$13,488 - \$90).

Accordingly, the Commission found reason to believe that Benton for Congress and Michael Sanders, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 103.3 (b)(3), (4), and (5) by knowingly accepting and retaining excessive contributions.

2. Failure to File 48 Hour Notices

The Audit staff found that the Committee failed to file 48-hour notices on two contributions totaling \$3,500 during the primary election and on 30 contributions totaling \$53,000 during the general election as required by 2 U.S.C. § 434(a)(6)(A).²

In its response to the Interim Audit Report recommendations, the Committee states that it was not required to file 48 hour notices for the 32 contributions in question because the "overwhelming majority" were allegedly received prior to the 48 hour period. The Committee also faults the Audit staff for considering the deposit date as equivalent to the receipt date. However, the Committee only provided one stamped envelope which demonstrated that a particular contribution was received outside the 48 hour notice period. It is the responsibility of the political committee to file 48 Hour Reports and also to maintain the relevant underlying records upon which the reports are based. 11 C.F.R. § 104.14(b)(1). In the absence of proof of the date of receipt, use of the deposit date is a reasonable alternative.

Furthermore, an examination of the contribution check dates reveals 13 checks dated within the 48 hour reporting period and eight more dated within three days of the period which suggests that they were received within the 48 hour period. The remaining 11 checks may have been received prior to the beginning of the reporting period, but not deposited until after the 20th day before the election. However, the Committee failed to keep the appropriate records showing the date of receipt.

² The primary election was held on September 15, 1998 and both checks were deposited on August 28, 1998 during the required reporting period of August 27, 1998 — September 12, 1998. The general election was held on November 3, 1998 and the remainder of the checks were deposited on five different dates during the required reporting period of October 15, 1998 — October 31, 1998.

Accordingly, the Commission found reason to believe that Benton for Congress and Michael Sanders, as treasurer, violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-hour notices.

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